

Addendum 2**PROGRAM REPORTS****WATER QUALITY CERTIFICATION PROGRAM**

The Central Valley Region has vast wetland resources in its rivers, streams and vernal pools. The function of the Water Quality Certification (WQC) program is to protect these wetlands by ensuring that waste discharged to these waters meets state water quality standards. The WQC program regulates dredge and fill activity that results in any discharge to waters of the U.S. These projects require a federal permit under Clean Water Act (CWA) §404. Pursuant to §401 of the CWA, any applicant for a federal license or permit for activities that may result in any discharge into waters of the U.S. shall provide the federal permitting agency (i.e., Army Corps of Engineers [Corps]) with a certification from the respective State. The WQC Program started as a relatively narrow response to the requirements of CWA §401. It has evolved into being the State's de facto wetland protection regulation program, without, however, formal recognition of these responsibilities or commensurate funding.

Typical projects for which WQC is requested include new subdivisions, bridges, roads, pipeline construction; levee reconstruction; wetland habitat improvement; pier installation; boat harbor dredging; gravel mining; flood control excavation; and minor stream crossings. Dredging of the two large Ports in the Delta and San Joaquin and Sacramento Deep Water Ship Channels also requires WQC. The Central Valley Regional Board receives between 350 and 425 new applications for water quality certification per year.

Within 30 day of receipt, Regional Board staff must notify an applicant whether or not their application is considered complete. A receipt letter is sent to the applicant stating whether or not the application is complete, and provides instructions depending on the status of the application. This may also include a request for additional fees in accordance with the fee schedule. If an application is determined to be complete, we have 60 days to issue or deny certification. These time requirements keep the limited WQC staff very busy with processing certifications.

The fee schedule for WQC includes an initial application fee of \$500. Additional fees are associated with the impacts of the project. Fill and excavation discharges require a fee of \$2150 per acre, for dredging \$0.08 per cubic yard and for linear projects (such as bank protection) the fee is \$5.00 per foot up to a maximum of forty thousand dollars (\$40,000). For projects that impact "isolated waters" the fee doubles. For FY 2004-05, the Central Valley Regional Board collected \$540,000 in fees but only received \$124,000 for staffing. This funding supported 1.7 PYs (\$72,941/py), which were split among our three offices. Receipts are expected to further increase in FY 2005-06 with further revision of the fee schedule. An additional 1.4 PYs have been approved in a BCP for the program in FY 2005-06, but we are restricted from recruiting new staff until we have met our salary savings for the year.

Inadequate funding for the program prevents staff from completing basic regulatory functions such as inspections, mitigation monitoring and enforcement. It is both federal policy and the Governor's policy that there be "no net loss" of wetlands. With current staffing staff is unable to ensure that these policies are implemented.

Further impacts to the program came in January 2001 when the US Supreme Court issued its decision in Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers (SWANCC). This decision limited the application of the CWA as it applies to "isolated" waters. The CWA no longer covers discharges of waste that are deemed non-jurisdictional by the Corps. By narrowing the water and wetland areas covered under federal protection, the decision limits the authority of the Corps, and the State and Regional Boards under federal law. However, the decision does not affect the State and Regional Board's authorities under state law to regulate any discharge to waters of the State including isolated, non-navigable waters, including wetlands.

The Corps non-jurisdictional disclaimers have not as greatly impacted the Sacramento and Redding Offices as the Fresno Office. The Corps is disclaiming jurisdiction over many isolated wetlands and ephemeral drainages in the Tulare Lake Basin. While the Board still has authority under state law, we do not have funding to implement a program to protect these non-jurisdictional waters. This is a significant issue for the Fresno Office.

However, of concern for all WQC staff is compensatory mitigation. Compensatory mitigation is required as a condition of most WQC. WQC are typically a component of the Corps' 404 permit; therefore the Corps usually enforces mitigation. With the SWANCC decision, isolated wetlands must now be regulated by the State. One true weakness in the "isolated wetlands" program is compensatory mitigation. Several Regional Boards currently require mitigation to meet the "no net lost" policy. However, staff currently follows the ACOE mitigation ratio which requires replacement of lost wetlands at a greater than one to

one ratio. However, staff has not been able to follow up to ensure that replacement wetlands have actually been created, much less assure that they are functional.

In summary, the WQC program is a minimally funded effort to ensure compliance with the State and federal water quality laws and to protect wetlands. A significant amount of money is collected from applicants but not returned to the Central Valley Regional Board for regulatory work. The SWANCC decision has added to the Region's WQC workload. A budget augmentation is planned for FY 05-06.